

11, 1958

No. 23 of 1956.

In the Privy Council.

UNIVERSITY OF LONDON
V. C. I.
24 JAN 1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

52050

BETWEEN
THE COMMISSIONER FOR THE REGISTRATION
OF INDIAN AND PAKISTANI RESIDENTS . Appellant
AND
MURUGAPILLAI PANJAN Respondent.

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Case for the Respondent

RECORD.

1. This is an appeal from the judgment and decree of the Supreme Court of the Island of Ceylon of Gratiaen and Sansoni, JJ., dated 25th February, 1955, allowing the Respondent's appeal under section 15 of the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949 (hereinafter referred to as "the Act"), against an order of the Appellant dated 14th August, 1953, under section 14 (7) (b) of the Act. pp. 50, 51.

2. The Respondent, being an unmarried male at the date of his application, made his application for registration in the prescribed form ID set out in the Regulations framed under the Act which required the Respondent to satisfy the Appellant— pp. 1 to 6.

(A) that Respondent was an Indian or Pakistani Resident as required by section 22 of the Act, No. 3 of 1949, as subsequently amended by section 4 of the (Amendment) Act, No. 37 of 1950;

(B) that Respondent had in the first instance the appropriate minimum period of residence in Ceylon prior to the 1st day of January, 1946, applicable to an unmarried person set out under section 3 (1) (a) read with section 3 (2) (a), and secondly, uninterrupted residence in Ceylon from 1st day of January, 1946, to date of application as required in section 3 (1) (b) of the Act, No. 3 of 1949;

(C) that the Respondent satisfied the Appellant the requisite conditions applicable to an unmarried person as set out under section 6 of the Act, No. 3 of 1949.

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pp. 8, 12 & 17.

3. The Respondent's application was investigated by the Investigating Officer as required by section 8 of the said Act, No. 3 of 1949, and the notes on evidence furnished at Investigation and the Investigating Officer's Report are consistent with the documents filed of record and the Questionnaire relating to Permanent Settlement completed by the Respondent.

p. 18.

4. On the 9th October, 1952, Mr. C. M. Agalawatte, Deputy Commissioner for Registration of Indian and Pakistani Residents, served notice on the Respondent under section 9 (1) of the Act, No. 3 of 1949, to the effect that he was refusing the application of the Respondent on the grounds set out in the Schedule to the Notice unless cause was shown to the contrary within a period of three months from date thereof. 10

pp. 19, 20.

5. On the 8th November, 1952, the Respondent through his Proctor showed cause against the refusal with the request to have the matter fixed for inquiry. The Appellant on the 22nd June, 1953, fixed the matter for inquiry under section 9 (3) (a) of the Act and required the Respondent to satisfy the following requirements at the said inquiry :—

Requirements referred to—

(1) that the Respondent had permanently settled in Ceylon ; the contrary is indicated by the fact that, in seeking to remit money abroad, you declared yourself to be temporarily resident in Ceylon ; 20

(2) that the Respondent was resident in Ceylon during the period 1st January, 1936, to July, 1947, without absence exceeding 12 months on any single occasion.

pp. 35-39.

pp. 42-45.

6. The Appellant held the inquiry to the Respondent's application on the 7th and 29th July, 1953, and the Appellant at the close of the inquiry reserved his order. On the 14th of August, 1953, the Appellant made Order refusing the Respondent's application on the ground that Respondent *had not permanently settled in Ceylon.* 30

p. 46.

7. On the 13th day of November, 1953, the Respondent filed a petition of Appeal to the Supreme Court pursuant to section 15 (1) of the Act. The grounds of Appeal included the following :—

pp. 47, 48.

“(B) The Commissioner has misdirected himself in regard to the question of the permanent settlement of the applicant-appellant in Ceylon by holding that although the applicant's residence in Ceylon answers a quantitative test it does not answer a qualitative test ;

(c) The applicant-appellant had conclusively proved that he had come to Ceylon in 1927, that he had made Ceylon his permanent home, that he had not applied for registration as an Indian National nor obtained an Indian passport, that he had no immoveable property whatsoever in India, that he had visited India only on two occasions for a period of about one month on each occasion, and that he had invested over Rs. 2,000/- of his savings in Ceylon ; 40

(D) The Commissioner had further misdirected himself in holding that the applicant-appellant was not permanently settled in Ceylon on the ground that he had declared himself to be temporarily resident in Ceylon in an application made by him to the Controller of Exchange to remit money to India ;

(E) It is in evidence that the applicant-appellant had remitted only a sum of Rs. 76.00 on account of urgent Medical expenses to his father in India ;

10 (F) It is respectfully submitted that the applicant-appellant was obliged solely as a result of the policy adopted by the Controller of Exchange to remit the aforesaid sum of Rs. 76.00 for Medical expenses as a temporary resident, though in fact he was permanently settled in Ceylon. It is submitted that no clear distinction was drawn by Government Departments and consequently by members of the Public regarding the significance of the terms temporary and permanent used in relation to residential qualification ;

20 (G) It is submitted that in any event declarations made to the Controller of Exchange are not relevant to the issue of permanent settlement involved in sections 4 and 23 of the said Act, No. 3 of 1949 ;

(H) It is further submitted that even if such declarations are relevant, such a declaration cannot change the character of the permanent settlement of the applicant-appellant in Ceylon as established by the conduct and action of the applicant-appellant and his long residence in Ceylon up to the date of his application.”

8. The Appeal in the Supreme Court was heard by Gratiaen, J., and Sansoni, J. In allowing the Appeal Gratiaen and Sansoni, JJ., p. 50. stated :—

30 “ This Appeal came before us on a reference by Swan, J., and was argued before us together with a similar Appeal—S.C. No. 517/54 Application No. J 154. It is not denied that if the judgment pronounced by us on the 18th February, 1955, be correct, the Appellant for the same reasons is entitled to succeed on this appeal. We accordingly allow the appeal for the same reasons as those contained in our connected judgment and direct the Commissioner to take appropriate steps under section 14 (7) of the Act on the basis that a *prima facie* Case for registration has been established to the satisfaction of this Court. The Appellant is entitled to the costs of this appeal.”

40 9. In their judgment dated 18th February, 1955, referred to in paragraph 8 above Gratiaen, J., and Sansoni, J., stated (p. 29 of Record in P.C.A. No. 18 of 1956) :—

“ The main question before us related to the meaning of the words ‘ permanently settled in Ceylon ’ in Section 22 of the Act

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(as amended by Section 4 of the Act No. 37 of 1950) which defines an 'Indian or Pakistani resident.' The Section in its amended form reads as follows :—

' 22. An Indian or Pakistani resident means a person (A) whose origin was in any territory which immediately prior to the passing of the Indian Independence Act, 1947, of the Parliament of the United Kingdom formed part of British India or any Indian State and (B) who has emigrated therefrom and permanently settled in Ceylon.'

and includes—

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(1) a descendant of any such person ; and

(2) any person, permanently settled in Ceylon, who is a descendant of a person whose origin was in any territory referred to in the preceding paragraph (A).

The preliminary requirement as to 'origin' in paragraph (A) presents no difficulty."

Gratiaen, J., and Sansoni, J., thereafter went on to say (p. 32 of Record in P.C.A. No. 18 of 1956) :—

" The concept of ' permanent settlement ' doubtless involves two elements, the fact of residence as well as the intention permanently or at least indefinitely to remain in this country. But in the context of the Act, the requisite intention is satisfactorily established by the applicant's positive decision to claim registration with a ' clear understanding ' of its implications. The condition laid down in Section 6 (1) is thus fulfilled. The gravity of the consequences of registration must be assumed to provide an adequate safeguard against an application by a person who does not genuinely intend to renounce his former status as a citizen of his country of origin."

Their Lordships then go on to state (page 34 of P.C.A. Record in No. 18 of 1956) :— 30

" He has satisfied all the onerous statutory conditions prescribed, and the circumstance that, in a very different context, he incorrectly described his residence in this country as ' temporary ' in order to facilitate (in violation of the ' exchange control ' regulations) the forwarding of the usual subsistence allowances to his mother and his sisters abroad cannot disqualify him."

p. 52.

10. On the 16th March, 1955, the Appellant applied to the Supreme Court for conditional leave to appeal to Her Majesty in Council. Conditional leave was granted on the 8th June, 1951, and final leave on the 3rd July, 1951. 40

p. 59.

11. The Respondent respectfully submits that this appeal should be dismissed with costs for the following, amongst other,

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REASONS

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- (1) BECAUSE the Respondent had proved conclusively that he had come to Ceylon in 1927 and made Ceylon his permanent home.
- (2) BECAUSE the Commissioner had misdirected himself as to the requirements that had to be satisfied by an applicant for registration under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949.
- (3) BECAUSE the Commissioner had misdirected himself in taking as the basis of his decision matters extraneous to the real issue in this Case and has proceeded by the method of a predetermined departmental formula.
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- (4) BECAUSE the Commissioner in regard to the application to remit money has failed to consider the document "Form M.O." in question as a whole but had drawn inferences adverse to the Respondent from portions of the document which are not warranted by the document or the facts in this particular case. ^{p. 28.}
- (5) BECAUSE the Commissioner made a wrong decision on the application of the Respondent.
- (6) BECAUSE on the footing of the test laid down by the Supreme Court the Respondent has established a domicile of choice in Ceylon.
- (7) BECAUSE the judgment of the Supreme Court was right and should be upheld.

C.S.B. KUMARA KULASINGHE
~~IVOR MISSO.~~
KSHARA FERNANDO
~~SURESHAN AMERASINGHE.~~

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Case for the Respondent

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